

**BEFORE THE LAND USE HEARINGS EXAMINER
CLARK COUNTY, WASHINGTON**

REGARDING THE APPLICATION FOR A PRELIMINARY)	FINAL ORDER
PLAT TO SUBDIVIDE AN APPROXIMATE 34.27-ACRE)	
PARCEL INTO 145 SINGLE-FAMILY RESIDENTIAL LOTS)	MERRITT'S
AND 1 COMMERCIAL LOT IN 3 PHASES USING THE)	HIDEAWAY
COUNTY'S DENSITY TRANSFER PROVISIONS IN THE)	SUBDIVISION
R1-6 AND CH ZONE DISTRICTS IN THE)	PLD2004-00041;
UNINCORPORATED CLARK COUNTY, WA.)	SEP2004-00066;
		HAB2004-00083;
		ARC2003-00073

APPROVED WITH CONDITIONS

INTRODUCTION

The subject property, which is located at 8809 NE 88th Street, is zoned R1-6 and CH. Surrounding properties are zoned R1-6, R1-7.5, and CH. The site is relatively flat, with wetland and habitat areas. There is an existing residence with accessory buildings, all of which would be removed. The Applicant is proposing a 3-phase development, which includes 145 single-family residential lots using the county's density transfer provisions, and 1 commercial lot. Phase 1 would include the development of single-family residential lots 1-53 and 61-145, as well as a 3.73-acre wetland mitigation tract. Phase two would include the development of single-family residential lots 54-60. Phase 3 includes lot 146, which is currently commercial, but the Applicant has indicated that they will seek to rezone this property to single-family residential in the future. There is no current development proposal for Phase 3 which is west of Curtin Creek. This application includes requests for SEPA, habitat permit, wetland permit, and archeological review.

Location: 8809 NE 88th Street; Parcel Number 155968-000 located in the Northeast Quarter of Section 5, Township 2 North, Range 2 East of Willamette Meridian; and the Southeast Quarter of Section 5, Township 2 North, Range 2 East of Willamette Meridian

Applicant: Aho Construction I, Inc.
Attn: Tom Arrowsmith
5512 NE 109th Court, Suite 101
Vancouver, WA 98662

Comp Plan: Urban Low Density Residential, General Commercial

Zoning: R1-6, CH

Applicable Laws: Clark County Code Sections: 12.05A (Transportation); 13.04 (Flood Control District); 13.08A (Sewer); 13.29 (Stormwater and Erosion Control Ordinance); 13.36 (Wetlands); 13.40A (Water); 13.51 (Habitat Conservation); Title 15 (Fire Protection); Title 17 (Land Division); 18.65 (Impact Fees); 18.308 (Single-Family Residential Districts); 18.313 (Commercial Districts); 18.327 (Floodplain Combining Districts); 18.411 (Interpretations and Exceptions); 18.600 (Procedures); 20.06 (SEPA); Title 24 (Public Health); 40.350.020 (Concurrency); and RCW 58.17 (State Platting Laws).

HEARING AND RECORD

The original Public Hearing on this matter was scheduled for August 5th, 2004, but the matter was continued without a hearing to August 26, 2004. At the hearing, the record was kept open for 10 days to allow additional comment and another 10 days after that to allow for the Applicant's rebuttal. The record was closed on September 15, 2004. A record of all testimony received into the record is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These Exhibits are filed at the Clark County Department of Community Development.

The Examiner has conducted an unaccompanied site visit prior to the Hearing.

Pre-first hearing communications:

On August 4, 2004 Keith Hirokawa filed a SEPA appeal of the County's July 21, 2004 DNS on behalf of the Friends of Curtin Creek ("Friends") and John Bishop concerning the Applicant's "potential impacts on Curtin Creek, the associated floodplain, riparian habitat and wetlands, and to the presence of threatened and endangered species in Curtin Creek." (Ex. 28) See SEPA discussion below for the resolution of the SEPA appeal issues.

Also received August 4, 2004 is a memorandum/letter from Tracy Fleming, referring to herself as wildlife biologist and a private citizen (Ex. 30) going on record as opposing any further development within the Curtin Creek drainage. She makes three points:

- 1) The area is inappropriate for development because it is sensitive due its draining features and seasonal flow fluctuations which will be exacerbated by additional impermeable run-off.
- 2) Curtin Creek, although now damaged can be restored and argues that presence of Coho, steelhead in the lower portions argues for restoration of this portion.
- 3) Need for open space.

Continuance period communications:

Staff issued revised recommendations and findings for this development on August 19, 2004 (Ex. 35) and these are reflected in this decision.

On August 20, Minister and Glaser acknowledged that the Applicant is volunteering to install:

- northbound left turn lane at the intersection of NE 94th Avenue/NE 88th Street and provide for minimum of 150' of vehicle storage, and
- northbound left turn lane at the intersection of NE 94th Avenue/NE 86th Street and provide for minimum of 250' of vehicle storage. (Ex. 36)

On August 26, 2004 Ecological Land Services responded to the SEPA appeal prepared by Mr. Hirokawa and addressed the environmental issues. (Ex. 38). The author's resumes, Francis Naglich and Mara McGrath, are attached as Ex. A to the Applicant's closing brief (Ex. 48).

On August 26, 2004 Mr. Hirokawa wrote again reasserting his previous SEPA appeal comments and objecting to phased review as practiced by the County. He also objected to habitat buffer averaging because decreases on one side of the creek are off set by increases on the other side of the creek. (Ex. 39). These issues will be addressed in the appropriate findings below.

Mr. Hirokawa also objects to road modification reducing the sidewalk width along NE 86th and ME 89th because staff findings conclude that the alternative design will be adequate, whereas the standard for granting modifications in CCC 12.05A.660 (1) (a) is equal or superior. He also raises the question of whether the proposed storm water system is undersized.

Also on August 26, 2004 Thomas Lonergan PE of Hopper Dennis responds to Staff Stormwater and floodplain comments which will be addressed in those findings. (Ex. 40). Finally, Jeff Wise PE in Ex. 43 comments on turning movement analysis for a conditionally approved 35' curb radii, and concluding that it will work for small tractor trailer (WB-40) trucks which are likely to access the site especially after it will be rezoned residential.

August 26, 2004 Hearing Testimony

Dan Carlson, the County's lead planner on this application, provided an overview of this application and its associated Staff Report. He noted that the original hearing on this development was continued until this evening; staff had problems with the Applicant's concurrency study and stormwater reports and had originally recommended denial. Since then, the Applicant has submitted a revised traffic study and stormwater plan and staff now finds that these items satisfy existing code, and is recommending approval of this application, subject to the conditions of approval. Consequently Ex. 35, a memo from staff to the Examiner, changes the recommendation to one of approval.

Going over significant developments since the issuance of original Staff Report, Ex. 28 is an appeal letter on the SEPA determination of non-significance from the Friends of Curtain Creek. Staff finds that the application, as now proposed, can satisfy the applicable County codes and standards and that therefore SEPA appeal should be denied. Exhibits 39 and 40 raise questions about transportation and stormwater regulations.

Ali Safayi, the County Engineer on this application, said there are three main issues raised in these Exhibits: transportation concurrency and safety (sidewalk modifications), stormwater

and SEPA approval. There are existing 5-foot sidewalks in the neighborhood and such width would be adequate to serve the development as well, especially given that the Applicant is applying for a rezone to a residential use. He explained that infiltration trenches located under the sidewalk are difficult to maintain and they are experimental, so there may be some potential for failure, which is why they should be installed in areas behind the sidewalk (Condition A-32, now A-23). He warned that preliminary approval of the size and location of the water quality facility does not guarantee approval. During engineering review Clark County reviews the proposal on behalf of the public. Finding 4 expresses concern of the potential impacts of the runoff on the neighboring property. The Applicant has submitted additional information addressing these concerns (See Ex. 40). Based on the evidence in the record, Staff recommended approval of this application, subject to the conditions of approval included in the Staff Report.

Randy Printz, the Applicant's attorney, said there is a substantial amount of evidence in the record, much of it introduced since the original Staff Report was produced. He noted that the Applicant has filed a brief in response to the SEPA appeal (See Ex. 44). The application meets all applicable density requirements. The Applicant has introduced a wealth of SEPA-related documentation. He explained that the Applicant has worked to satisfy Staff's concerns, including the stormwater management system and transportation concurrency.

Sight distance is more than 500 feet, well in excess of code, and the accident history of the relevant intersections is well within the applicable safety standards.

Road modification for a 5-foot sidewalk has been granted. The property west of the ditch is commercial.

An amicable resolution was also achieved on the carrying capacity of the road traversing the site.

The Applicant believes proposed Condition A-27 (A-17 in the revised numbering) which excludes direct street access to Padden Expressway is not one the County can enforce, at least today, under this application; the Applicant objects to this condition because it covers all phases. At issue is the difficulty of extending NE 86th west over the creek. It is premature to cut off access to Padden for Phase 3. The time to argue about this issue is site plan approval for Phase 3.

With respect to stormwater, the County has essentially said that while they do have some concerns, they're willing to deal with them under final engineering approval. He said he would prefer not to have to argue about this later. Findings 1, 2 and 3 are fine; Finding 4 (Ex. 35) is more problematic. Staff's concern is that the property slopes to the north because drainage generally moves to the northwest and Staff is concerned that we will flood the neighbors to the north. Mr. Printz provided a diagram illustrating how the lots in question will be graded, drained and swaled to prevent any stormwater from leaving the site in that direction. He also provided the engineer's drainage calculations for the portion of the site that drains to the north.

(Ex. 40); what this shows is that the proposed plan would actually significantly improve drainage to the north.

Mr. Printz continued that the Applicant is willing to work with Staff on Finding 5 at final engineering. Finding 7 raises a concern about an impermeable layer of soil present at a depth of about 5 feet over a portion of the site; he noted that a total of 34 test pits were dug, all to a depth of 9.5-15 feet. The County stormwater ordinance encourages infiltration; he noted that, particularly in the northeast part of the site, the test pits show that the soils are highly permeable, at 1,000 inches per hour. Elsewhere, on the westerly third of the site, where infiltration is less, stormwater runoff will be treated and piped east, rather than using an infiltration system. He read the relevant section of a letter, dated August 26, regarding the fines content of the soil, noting that fines are not a concern at this site because there are no fines of sedimentation in any of the test pits (See also Ex. 45).

Staff also raised a concern about a potentially high groundwater table; the Applicant's civil engineering firm has produced a stormwater analysis that shows that groundwater is 22 to 55 feet below ground. Our infiltration will occur at a maximum depth of 10 feet, well within the four-foot separation criteria. We used a more conservative mapping of the floodplain by West Engineering. Applicant is now working on exact infiltration locations outside the floodplain. We do not believe that a groundwater analysis is necessary, contrary to Staff's recommendation. Printz added that this site is well outside Curtain Creek's floodplain.

With respect to the wetlands and habitat issues raised by the appellant, there is a brief from ELS in the record (Ex. 38) that specifically responds to each of the concerns raised, Mr. Printz continued. What is out there today is an alfalfa and oat field that is routinely farmed right up to the banks of this ditch. There is a small jurisdictional wetland, 1.33 acres, on the west side that also gets tilled and mowed. The appellant argues that Curtin is a Class 1 or 2 stream, and should get a 300-foot buffer. This is grossly inaccurate. Class 1 is an identified shoreline of the state and Curtain Creek cannot be considered a Type 1 stream. To be a Type 2 stream, the creek must be 20 feet wide and provide functional spawning or rearing habitat for fish; there is no evidence in the record that would show that for Curtain Creek, which is shown as a Type 3 stream in the County's records.¹ Curtin Creek is approximately 3 feet wide, shallow with a sandy bottom. Both the County and WDFW agree on that designation. The buffer for a Type 2 stream is 200 feet and may be averaged under County ordinance. The Applicant has also added a substantial amount of habitat enhancement with permanent fencing and a conservation covenant. ELS analysis shows that the creek will have a much higher level of functionality post-development than it currently enjoys. Overall, the Applicant believes that the wetlands and habitat conditions in this stretch of the creek will be improved not harmed, by this development. Mr. Printz introduced a *Bohn v. Fred Meyer* 111 Wn App 711 (2002) in support of the Applicant's contention that a cumulative effects analysis should not be required.

On the procedural SEPA appeal there is no evidence of probable adverse impact. SEPA analysis is all one, so there is no phase review even if the project is phased.

¹The Applicant relies on WAC 222-16-031(3)(b)(i)(A) for his conclusion, quoted on page 3 of Ex. 44.

Public Testimony:

Keith Hirokawa, representing the Friends of Curtain Creek said that he has not had an opportunity to review many of the most recent Exhibits discussed tonight; in particular, he has also not been allowed to review Ex. 8, which covers cultural resources on this site. The major issues come down to riparian habitat and buffers. With respect to SEPA, this is an informational statute; it requires that the relevant information be made available before ground is broken. Code does not require duplicative review. A literature review clearly indicates that impacts to the riparian zone extend out at least 100 feet from the riparian zone; there is no mitigation for that 100 feet on the east side. Mr. Hirokawa said that, in his view, the *Bohm v. Fred Meyer* case is not relevant to this case. This development, if it proceeds, will impair the ability to provide salmon recovery and habitat restoration measures in this portion of Curtain Creek. It is a cumulative impacts issue, because a variety of projects are affecting this water body. It doesn't seem overly burdensome to require a cumulative impacts study.

With respect to the phased review issue, Mr. Hirokawa continued, there is no analysis of the impacts of this phased development on the creek. The road will eventually cross the creek and go through the riparian area, but there is no analysis of the cumulative impacts of that next phase of the development. SEPA requires analysis of those known future impacts at the earliest possible time, in this case, as soon as it is known the road is going to be built. He cited the *Port of Vancouver v. Clark Public Utilities* (03-149 and 03-151) in support of this position.

Included in Ex. 8 is the archaeological survey; there were findings there that came back positive. The surveyor, however, determined that no further work was needed. Mr., Hirokawa reiterated that he has not been able to review Ex. 8.

With respect to the HCO, the Applicant is allowed to reduce the buffer in certain areas, so long as the size, function and values of the riparian are maintained – no net loss to any of those factors. Clark County Code 40.440.020.C.3 only applies to existing lots, not new lots. My reading of this is that this is for future, not existing lots – this is a division, not a clearing, proposal. Another problem is the western side of the creek – either it is or it is not a part of this project.

3. Required riparian zone widths on clearing proposals on existing lots may be varied through the use of internal riparian zone averaging. Subject to review under this chapter, for clearing proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent (50%) from the normal standards of this chapter if riparian zone widths are correspondingly increased elsewhere within the Applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel.

The code defines riparian zones not in terms of form, but in terms of function, and requires the application of best available science. The issue is whether or not the averaging scheme is supported by the best available science. Mr. Hirokawa submitted “Management

Recommendations for Washington's Priority Habitats" (Ex. 46) for the proposition that best available science is not being applied in this case because the project lacks 200-foot buffers on both sides of the creek.

The Examiner asked whether on this site, specifically, there evidence in the record that there are some habitat values that would be sacrificed under this proposed development. Why wouldn't the literature constitute that kind of evidence? Mr. Hirokawa asked. Because you have to establish impacts to this particular site, this particular stretch of the creek, the Examiner replied. The evidence, as far as I understand, is that WDFW has presumed fish use for this portion of Curtain Creek, which means best available science must be used to curtail impacts to the creek and its riparian areas, replied Mr. Hirokawa, adding that, lacking site access, he does not have an expert analysis in support of his argument. So based on the function established for this particular stream, you're arguing that the relevant riparian criteria are not being met? the Examiner asked. Essentially, yes, Mr. Hirokawa replied. You still need evidence that certain functions are being compromised by the Applicant's approach to habitat conservation in this particular reach of the creek, concluded the Examiner.

You're asking for additional time to examine the submittals over what period of time? the Examiner asked. The submittals over the past year, Mr. Hirokawa replied. He added that many of the studies the Applicant is relying on in support of his position are wetlands studies, not riparian studies.

Staff Response

David Howe, County habitat biologist, said this project was reviewed using whatever on-the-ground features existed. In this case, the Applicant has provided a proposal that results in a net gain of habitat functionality. WDFW has reviewed the Applicant's proposal and reached the same conclusion, so it was relatively easy to write the conclusion we did.

Steve Schulte addressed condition A-27, regarding access from Padden Expressway to the commercial area; he said he didn't write this condition, but believed that Staff's conclusion was that access would come from 88th or 94th, with no direct access from Padden to the commercial area. He referenced County code 40.350.030B.4.d (1) in support of this conclusion. He noted that Subsection (1) closes the door on the question of access from an arterial. In view that the areas may be rezoned and there is no current proposal for the site can we decode the access issue if and when that portion comes up for site plan review? the Examiner asked. Yes, Mr. Schulte replied.

Dan Carlson stated that with respect to the availability of the archaeological survey, that survey is not a part of the public record, in order to prevent looting and depredation. Ex. 42 includes the relevant citation, said Carlson, adding that he has reviewed the archaeological report and it is the basis for Condition D-1.

Applicant Rebuttal

Mr. Printz said that there appears to be some misunderstanding of the mitigation plan for this site – mitigation is planned for both sides of the creek. With respect to the best available

science argument, the ordinance is based on best available science; there is not one shred of scientific data in the record that shows that the Applicant would be violating the ordinance or doing harm to these environmental features or to fish and wildlife. He reiterated that both the County and WDFW have reviewed and supported the Applicant's mitigation plan. With respect to the phased review argument, Mr. Printz noted that the two phases currently planned for development are before the Examiner at this time. The need for access to the commercial site is purely speculative at this time, and can likely be accommodated through alternative access routes. Buffer averaging applies to this development. He reiterated that there is no evidence in the record to show that this application would violate any applicable County or state standard.

The Examiner noted that there has been a request for some additional time for Mr. Hirokawa to review recent submittals. He agreed to grant 10 days for Appellant review and 10 days for Applicant rebuttal, beginning tomorrow.

Open Record Period:

Ex. 47: A September 3, 2004 Comment Letter from Mr. Hirokawa.

Mr. Hirokawa addresses three issues: SEPA Noncompliance, Internal Buffer Averaging, Nature of evidence required.

SEPA Compliance:

- The County bears the burden of demonstrating the environmental impacts, including off-site impacts have been considered, including contribution to the cumulative impacts.
- WRIA 28 (which includes Curtin Creek) has identified accumulation of development as impacting the likelihood of habitat restoration. This is also the time to examine the impacts of a road stubbed at Curtin Creek for future extension into Phase III.
- The application proposes intrusion into riparian buffer areas on the east side and that loss has not been studied under SEPA. Compliance with HCO buffer averaging does not discharge SEPA study obligation. There has not been watershed-level study to determine the habitat, water quality and quantity needs of Curtin Creek at this location. Under SEPA, if otherwise applicable ordinance does not mitigate or require consideration of such impacts, then SEPA may not be avoided.
- The memo than discusses lead agency responsibility under SEPA of having a *prima facie* burden to show *prima facie* compliance with procedural requirements of SEPA. Mr. Hirokawa's argument appears to be that the county has not conducted a required site-specific review sufficient to show a *prima facie* compliance.

HCO's Internal Buffer Averaging:

- Under the HCO scheme, a riparian buffer may be reduced up to 50% "if riparian zone widths are correspondingly increased elsewhere within the Applicant parcel, such that the overall size and function and values of the riparian zone are maintained."²

² CCC 40.440.020.C.3

- The Applicant's proposal to reduce the eastern side by 100 feet and to increase western buffer by 100 feet is not consistent with DFW's best available science conclusion that a 200 foot buffer should be required, citing WDFW Management Recommendations for Washington's Priority Habitats, Riparian (December 1997) at 78. (Ex. 46 - does not contain page 78). Mr. Hirokawa asserts that the Applicant needs to explain divergence from DFW's findings.
- Mr. Hirokawa then argues that DFW's recommendations are binding on the County, whether or nor the recommendations are site specific, if the site falls under the general recommendations definitions or descriptions.
- The Staff and the Applicant are in error when they argue the best science rule is only applicable to the delineation of habitat areas. The best science rule is also applicable to protection of that habitat under RCW 33.70A.172 (1). The HCO also requires the use of best scientific information during the project review and that obligation does not cease simply because HCO itself reflects best science.
- Consultation with DFW is required and there is nothing in the record that such consultation took place. The Applicant relied on wetland literature to determine the size of the buffer and this may not apply to riparian areas. The DFW Recommendations requires, as a minimum, that a variation of the buffer width be supported by additional site specific and watershed area studies.(Citing page 83 also not in the record)

Ex. 48 A September 15, 2004 Final Brief from Mr. Printz

In Summary, Mr. Printz makes the following points, all of which are discussed in more detail in the relevant habitat and SEPA findings:

- The Appellants still have not provided any expert testimony analyzing the approval criteria under the HCO. The record is devoid of any evidence demonstrating that the Applicant's proposal does not comply with the County's HCO.
- WDFW Management Recommendations: The Appellants' premise that a watershed level study is required is simply a misreading and incorrect application of the WDFW Management Recommendations for Priority Habitats relating to riparian zones ("PHS Riparian Recommendations")
- The PHS Riparian Recommendations state that, "site specific activities should strive to retain or restore fully functioning riparian habitat and habitat characteristics that are required by fish and wildlife."³ The Appellants ignore this language and instead focus on the literature discussing generalized impacts to riparian zones
- The HCP's functional analysis demonstrates that the post-project level of riparian function will improve over that which currently exists. In addition, all of these characteristics will be replaced or greatly improved by the mitigation plan.
- Appellants argue the Applicant's plan does not meet the criteria because the reduction of buffer width on the eastern side of the creek is not balanced out by the buffer width expansion on the western side of the creek. Appellants provide no evidence, other than speculation, to support this contention.
- Appellants miss the mark with their interpretation of the PHS Riparian Recommendations. They fail to understand that these recommendations are designed

³ PHS Riparian Recommendations at page 79.

- to assist local governments in the establishment of development regulations. With respect to site-specific conditions, the PHS Riparian Recommendations promote the use of site-specific studies and mitigation plans stating, “site specific activities should strive to retain or restore fully functioning riparian habitat and habitat characteristics that are required by fish and wildlife.”⁴ Similarly, the approval criteria under the HCO require that the HCP substantially maintain the level of habitat functions and values.⁵
- The Applicant has provided a plan that has been reviewed and approved by both Clark County and WDFW. The plan establishes the baseline conditions for the Curtin Creek riparian zone and then demonstrates that the activities to be undertaken will substantially maintain, and even increase, the levels of habitat functions and values. The Appellants have provided the Examiner with no scientific analysis of any kind. They fail to provide any site-specific analysis of this riparian zone or any critique of the Applicant’s plan aside from the mistaken assertion that a 200 foot buffer is “required”.
 - **SEPA: Cumulative Impacts:** There is no proposal to develop the west side of the creek at this time. There is no plan for a crossing of Curtin Creek at this time. The Merritt’s Hideaway development now before the Examiner and the potential development on the west side of the creek are not a single course of action. The development of Merritt’s Hideaway will occur with or without development of the property on the west side of the creek.
 - **Watershed Level Studies:** the Appellants are mistaken regarding the requirement that a watershed level study be done for this site specific development. Accordingly, it is inappropriate to require SEPA review for the impacts in the entire Salmon Creek watershed. This area is enormous. The Appellants reliance upon the PHS Riparian Recommendations in this regard is misplaced. The SEPA review in this case adequately evaluated the impacts to Curtin Creek and the mitigation measures imposed under the HCO dictated that the County issue a DNS for the project.

FINDINGS

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by Staff, the Applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues were either raised by the Applicant, addressed by Staff in its original report (Ex. 23) as amended in the revised Report and recommendations (Ex. 35), or by agency comments on the application, by the SEPA appellants and other public commentators and the Examiner adopts the following findings with regard to each:

Finding 1

⁴ PHS Riparian Recommendations at page 79.

⁵ CCC 40.440.020(A)(2)(a)

In the Staff Report and recommendation (Ex. 23), county Staff recommended that the Hearings Examiner deny the proposed subdivision because Staff could not find that the proposal complied or could comply with CCC 12.05A (Transportation), CCC 12.40 (Transportation Concurrency Management), and CCC 13.29 (Stormwater and Erosion Control). The Applicant has since submitted road modification request (Ex. 25), a revised traffic study (Ex. 17), and a revised stormwater plan (Ex. 26 & 27). Staff has reviewed this new information (See Ex. 33, and 34) and now finds that the proposal can comply with these code sections. Staff now recommends approval of the proposed subdivision, notwithstanding a SEPA appeal filed by Mr. Hirokawa on behalf of the Friends of Curtin Creek and Mr. Bishop on August 4, 2004 (Ex. 28).

The vesting finding on page 3 of the original Staff Report is not contested. (Ex. 28)

LAND USE:

Finding 2

This project is proposed for phased development as shown on the proposed preliminary plat (Ex. 5). Any extension requests shall be in compliance with CCC 18.600.105. (See Condition E-2) Only Phase 1 and 2 areas which are zoned R1-6 are proposed for development. No commercial or residential development is proposed west of Curtin Creek including in the which is primarily zoned CH with a sliver of R1-6 zoning which is west of wetland buffer and part of the Habitat Conservation buffer. The bulk of the area west of Curtin Creek is zoned CH and 2.23 acres of that is dedicated to the habitat buffer. The commercial lot is designated as lot 146.

Some of the difficulty of analyzing this case, SEPA appeal as well as the Staff discussion, comes from the fact that there is different zoning in Phase 3, CH and that nothing is being proposed for phase 3, lot 146, because of access difficulties. With no direct access allowed outright to major streets, the applicant has indicated that he will seek a rezone to residential, since residential market, unlike commercial, prefers non-major streets. Thus the key fact remains that all this application seeks is the creation of a lot whose fate will be decided in the future. The impacts of this lot in light of absence of a committed access point and designated use makes many points raised by the appellants and some of the concerns raised by staff premature. If the lot is rezoned residential the key issues of access and any impacts of the access choice will be decided during preliminary plat review. If the lot is not rezoned and the applicant makes a commercial development proposal then the key issues will be addressed during site plan review.

Finding 3

CCC 18.411.015 (B) (2) states:

“The density for property developed in single-family zone districts, if encumbered by land identified as sensitive due to the presence of steep slopes, unstable land, historical or archaeological sites, wetlands and buffers, or other permanent physical development limitations as may be determined by the planning director or land voluntarily set aside for open space or commons as

approved by the planning director, from the gross acreage may be transferred to the remaining unencumbered land areas on the same development site...”

Within the portion of the subject property zoned R1-6, the Applicant is proposing to transfer density from an area encumbered by wetlands and habitat to the remaining unencumbered areas on the site using the density transfer provisions of CCC 18.411.015(B).

Finding 4

CCC 18.308.060 requires a minimum lot size of 6,000 square feet for new lots in the R1-6 zone. CCC 18.411.015 allows a maximum lot density of 5.8 dwelling units per acre for the area from which density is being transferred. Therefore, allowable density calculations are as follows (Please note: these calculations are based only on the portion of the property zoned R1-6):

<i>Total site area:</i>	29.19 acres
<i>Wetland and Habitat Areas:</i>	3.73 acres
<i>Area deducted for right-of-way:</i>	6.66 acres
<i>Area of site not using density transfer:</i>	$29.19 - (3.73 + 6.66) = 18.8$ acres
<i>Max. lots allowed without density transfer:</i>	$(18.8 \times 43,560) / 6,000$ square feet = 136 lots
<i>Min. lots allowed without density transfer:</i>	$(18.8 \times 43,560) / 8,500$ square feet = 96 lots
<i>Total lots transferred:</i>	$3.73 \times 5.8 = 21$ lots

<i>Total minimum lots allowed for this application:</i>	96 lots
<i>Total maximum lots allowed for this application:</i>	$136 + 21 = 157$ lots

The Applicant is proposing 145 lots (and 1 commercial lot), which therefore is in compliance with these requirements.

Finding 5

CCC 18.411.015(B) (2) (B) states, “A recorded covenant shall be placed on those areas or tracts from which density is transferred prohibiting any development of the parcel or tract inconsistent with its intended use.” Therefore, prior to final plat approval the Applicant shall provide a covenant for recording, or a copy of a recorded covenant, which prohibits any development of the wetland and habitat areas. (See Condition A-1)

Finding 6

Table 402A-1 would require buffering and landscaping along the northern & eastern portion of Lot 146 where the property abuts R1-6 zoning. If the property is rezoned to single-family residential zoning, then this landscaping requirement would not apply. If it is not rezoned, then the landscaping requirement would be deferred to the time of site plan review.

Buffering and landscaping would also be required along the western and southern portion of the Lot 146, where the property abuts CH zoning. If the property is rezoned, then different buffers will be required. These buffers would be established at the time of subdivision review for Phase 3. If the property is not rezoned, then the landscaping requirement would be

deferred to the time of site plan review. Based on the above review, no landscaping and buffering conditions are warranted at this time.

HABITAT:

Finding 1

There are two mapped riparian Habitat Conservation Zone (HCZ's) areas present on the subject parcel. The riparian designations are associated with Curtin Creek and a tributary (Padden Creek). Both streams are Department of Natural Resources (DNR) type 3 watercourses in this area.

According to CCC Table 40.440.010(C) (1) (a) of the Habitat Conservation Ordinance (HCO), a DNR type 3 watercourse requires a 200-foot riparian Habitat Conservation Zone (HCZ). The HCZ extends outward from the ordinary high water mark 150 feet, or to the edge of the existing 100-year floodplain, whichever is greater. In this case, the former of the two measurements defines the extent of the riparian HCZ.

Finding 2 - Watercourse Classification Issue

Mr. Hirokawa in his SEPA appeal and comments raises the issue of whether the watercourse is properly classified. On page 8 of his SEPA appeal/comment he argues that A "Type 3 water" is defined as "segments of natural waters which are not classified as Type 1 or 2 Waters, and have a moderate to slight fish, wildlife and human use." (WAC 222-26-031(3) "Fish use" is presumed for "stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington. . . and having gradient of 16 percent or less." (WAC 222-16-031(3)(A). From this he concludes that since there is no contention against fish use of Curtin Creek, it should be analyzed as Type I or 2. However, Type 3 contemplates slight fish and human use.

Type 1 water is an identified shoreline of the state and Curtin Creek cannot be considered a Type 1 stream because it is not so identified (See WAC 173-18-100 Clark County Streams listings). To be a Type 2 stream, the creek must be 20 feet wide and provide functional spawning or rearing habitat for fish; there is no evidence in the record that would show that for Curtin Creek, which is shown as a Type 3 stream in the County's records.⁶ Curtin Creek is approximately 3 feet wide, shallow with a sandy bottom. Both the County and WDFW agree on that designation. The Examiner finds no basis for challenging Type 3 classification within the context of this application.

Finding 3 - Endangered Fish

Within the context if "Fish Use" Friends and Mr. Bishop claim that Curtin Creek and its associated floodplain are known to support populations of Coho and Steelhead. Later he alludes to "the absence of sensitive species analysis". Elsewhere he argues that Curtin Creek is mapped for supporting Coho and steelhead and questions, in a non-specific way, whether the mitigation and buffer averaging adequately address the presence of these fish.

⁶ The Applicant relies on WAC 222-16-031(3)(b)(i)(A) for his conclusion, quoted on page 3 of Ex. 44.

These concerns are all addressed extensively by two biologists in the memo from ELS (Ex. 38) and I find that memorandum totally persuasive as I do the testimony of the County's habitat biologist. To summarize their points:

- “presumed presence” of Coho and steelhead differs from “documented presence” The presence occurs toward the confluence with Salmon Creek and not in this reach of Curtin.
- the documented fish upstream of the property is speckled dace, which is why the stream is classified as Type 3 and Type 4.
- There are in stream or stream channel modifications being proposed. Sensitive species analysis is not required because the riparian buffer and associated wetland will be enhanced to improve functions - see below. “Presumed presence” does not trigger state or federal Endangered Species Act review in absence in in-water or over-water work in Curtin Creek.
- The HCP provided extensive review of all the habitat functions.
- As Mr. Printz emphasized in his testimony and is discussed on page 3 of Ex. 38 - agricultural activity and routine ditching of the stream, including periodic removal of the shrubs, will be stopped and an enhanced conservation areas established.

In conclusion, there are no documented sensitive species in this part of the Creek and the proposed activity enhance fish habitat while staying out of or over the stream.

Finding 4 - Buffer Averaging Issue

The Applicant is utilizing internal riparian zone averaging (CCC Chapter 40.440.020(C)(3))⁷ in concert with habitat mitigation in order to accommodate portions of the development. The Applicant proposes to reduce the eastern 200' of riparian HCZ width to 100' and compensate for the reduction with comparable width and acreage west of the creek.

Mr. Hirokawa objects on page 10 of Ex. 28 and orally at the hearing (See also his August 26, 2004 Memo (Ex. 39 at page 2) and finally in concluding memo of September 3, 2003 (Ex. 47 at page 4). His argument can be divided into two parts. As a matter of law he argues that riparian buffer averaging is available for “clearing proposals on existing lots”, and this is a subdivision proposal to create new lots. Further, assuming that averaging applies, a riparian buffer can be reduced up to 50% if its correspondingly increased elsewhere within the Applicant parcels, such that the overall size and function and values of the riparian zones is maintained.

As to the first argument, the lots on which the averaging is proposed are existing legal lots, notwithstanding the fact a subdivision is being proposed. Likewise there is a corresponding

⁷ Required riparian zone widths on clearing proposals on existing lots may be varied through the use of internal riparian zone averaging. Subject to review under this chapter, for clearing proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent (50%) from the normal standards of this chapter if riparian zone widths are correspondingly increased elsewhere within the Applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel.

addition of at least 100 to 200 feet to the first 200 feet of the buffer on the west side to compensate for the decrease on the east side and there is extensive enhancement of the buffers so that the value and the function of the riparian habitat is substantially improved - see ex. 8, Tab 17, Figure 2. Because of the shape of the parcels the acreage subtracted on the east and added on the west adds up to 1.46. The Appellants appear fixated on the 200 feet buffer as if it were by and of itself a magic talisman without focusing at all on what is being proposed within the buffers.

The staff habitat biologist finds the reduction and compensation areas to be functionally equivalent, of comparable square footage, and functionally connected to the existing riparian area. Therefore, the net size, functions, and values of the habitat area will be maintained as required. Staff argument and conclusion is amply supported in the Applicant's Conservation Plan (HCP - Ex. 8, Tab 17) and amplified again by ELS rebuttal in Ex. 38. The HCP assessment of post-treatment function, starting on page 9 - indicates that the enhanced wetland will provide greater cover and forage for wildlife - See Figure 5 for the enhancement schematic. The resident and anadromous fish habitat potential will likely increase because of the multi-canopied riparian community and subsequent stream shading. The plan concludes, however, that the actual anadromous fish habitat is unlikely to change from its existing condition because the upstream fish passage barrier (e.g. perched culvert) and stream substrate is not expected to improve. Every measure of water quality, water quantity and habitat suitability improves over a 10 year period because of function enhancements (HCP - Table 1). The ELS study supports this finding because of the significant enhancement of the 100 feet butter on the east side. The west side buffer is enhanced as well. So that there is net improvement in functional performance of the stream and the wetland for all forms of fish and wildlife. The Appellants introduce no evidence to rebut the habitat conservation plan submitted or the Staff conclusions.

The Examiner finds no basis for disagreeing with Staff findings and conclusions that buffer averaging is permitted and that the buffers proposed are functionally equivalent, of comparable square footage, and functionally connected to the existing riparian area. The bottom line is that three biologists have indicated that the proposal improves habitat because of enhancement, even with one bank reduced, and no biologist has indicated otherwise.

Finding 5 WDFW Management Recommendations:

The Appellants make several passes on the need for a watershed study based on general recommendation contained in WDFW Management Recommendations for Priority Habitats relating to riparian zones ("PHS Riparian Recommendations"). Appellants argue that their evidence of best practices supported by the latest science is entirely composed of these management recommendations to provide 200 riparian buffer for Type 3 streams. While the PHS Riparian Recommendations are valuable planning tools it is important to recognize their purpose.

Because PHS management recommendations address fish and wildlife resources statewide, they are generalized. Management recommendations are not intended as site-specific prescriptions but as guidelines for planning.

Because natural systems are inherently complex and because human activities have added to that complexity, management recommendations may have to be modified for on-the-ground implementation. Modifications to management recommendations should strive to retain or restore characteristics needed by fish and wildlife. Consultation with fish and wildlife professionals is recommended when modifications are being considered.⁸

The PHS Riparian Recommendations are designed to assist local jurisdictions in the process of enacting development regulations relating to impacts to wildlife habitat. Clark County utilized the PHS Riparian Recommendations when they enacted the HCO. While Appellants' correctly note that Best Available Science must be used in evaluating HCP's, their assertion that the PHS Riparian Recommendations must be strictly adhered to in site-specific evaluations is inaccurate.

The PHS Riparian Recommendations go on to acknowledge that site-specific conditions may dictate different mitigation measures stating:

Landowners and managers may have to make modifications or compromises to these recommendations in order to consider site-specific factors. Site-specific study and examination of alternative solutions that would meet the needs of fish and wildlife may be necessary if landowners and managers desire to implement practices other than those recommended here. These management recommendations have not provided guidance to address all alternative solutions because the variables are too numerous and complex and should be evaluated on a site-by-site basis. Landowners and managers should consult with professional fish and wildlife biologists when making substantial modifications to these recommendations. Biologists can help to develop more specific and innovative means of meeting the needs of fish and wildlife.⁹

The Applicant's HCP was prepared by Francis Naglich and Mara McGrath of Ecological Land Services ("ELS"). The Curriculum Vitae for Mr. Naglich and Ms. McGrath are attached as Ex. "A" to Exhibit 48. Testimony at the hearing confirmed that consultation between WDFW, the County and the Applicant occurred; and, that WDFW concurred with the County that the Applicant's proposal was adequately mitigated by the Applicant's HCP.

Finding 6 - HCP Improves and Protects the Habitat

⁸Knutson, K.L., and V.L. Naef. 1997. Management recommendations for Washington's priority habitats: riparian. Wash. Dept. Fish and Wildl., Olympia. 181pp. (hereinafter "PHS Riparian Recommendations") at p. 1, 2.

⁹ PHS Riparian Recommendations at page 78.

The PHS Riparian Recommendations state that, “site specific activities should strive to retain or restore fully functioning riparian habitat and habitat characteristics that are required by fish and wildlife.”¹⁰ The uncontroverted evidence in the record demonstrates that the existing riparian conditions along Curtin Creek at the site are of poor quality.¹¹ Connectivity of riparian habitat along Curtin Creek is limited due to lack of vegetation. Vegetation composition is poor. There are no multiple canopy layers. Natural disturbances have been replaced by human disturbances (ditching, culverts, and agriculture). No snags or woody debris exist. Shape has been impacted by ditching. The stream bank is not stabilized with deeply rooted vegetation. The associated wetlands are dominated by an invasive species. The HCP’s functional analysis demonstrates that the post-project level of riparian function will improve over that which currently exists. In addition, all of these characteristics will be replaced or greatly improved by the mitigation plan.

In conclusion, the Applicant has provided a plan that has been reviewed and approved by both Clark County and WDFW. The plan establishes the baseline conditions for the Curtin Creek riparian zone and then demonstrates that the activities to be undertaken will substantially maintain, and even increase, the levels of habitat functions and values. The Appellants have provided no scientific analysis of any kind. They fail to provide any site-specific analysis of this riparian zone or any critique of the Applicant’s plan aside from the mistaken assertion that a 200 foot buffer is “required”.

CCC 40.440.020(A)(2) states,

- A. Approval Criteria. Approval shall be granted for all proposals demonstrating compliance with the following criteria. Approval shall be required prior to clearing or development.
- 2. Basic Criteria. Applicants proposing activities subject to this chapter shall demonstrate that the activity:
 - a. Substantially maintains the level of habitat functions and values; and
 - b. Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.

The HCP contains detailed analysis demonstrating that the area currently has “moderately low” habitat suitability.¹² The Habitat Conservation Plan then goes on to demonstrate how Water Quality, Water Quantity and Habitat Suitability will be improved through the enhancement of the buffer areas. Both sides of the creek will be enhanced, per the HCP. The

¹⁰ PHS Riparian Recommendations at page 79.

¹¹ PHS Riparian Recommendations pages 79-81. Habitat characteristics include: (1) connectivity; (2) vegetation composition; (3) multiple canopy layers; (4) natural disturbances; (5) snags; (6) woody debris; (7) shape; (8) width; (9) stream bank stabilization; and (10) associated wetlands.

¹² Habitat Conservation Plan, page 9.

Applicant by unchallenged evidence of high quality clearly demonstrates that the applicable approval criteria have been satisfied.

Finding 7 - Conclusions and Conditions

The Applicant provides the necessary analysis showing the existing habitat functions will be maintained with this project as required under CCC Chapter 40.440.020(A)(2)(a). Therefore, provided the following conditions of approval are implemented, the subdivision complies with the CCC Chapter 40.440, the Habitat Conservation Ordinance.

1. The Applicant shall implement the "Habitat Conservation Plan," submitted by Ecological Land Services, Inc. and dated March 22, 2004, except as amended herein. (See Condition E-4)
2. A copy of this mitigation plan shall be available on-site during construction, for inspection by Clark County development inspection personnel. (See Condition E-5)
3. All requisite mitigation shall be installed prior to Final Plat approval, unless otherwise postponed through the establishment of a performance/maintenance bond, escrow account, or other financial guarantee acceptable to the Planning Director. (See Condition A-2)
4. Appropriate demarcation and signage of the reduced habitat boundaries shall be in place prior to initiating any groundbreaking activity. (See Condition E-6)
5. Signage shall be posted along the habitat boundaries at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and be perpetually maintained by the homeowners in such a manner so as to sufficiently identify and protect habitat functionality. (See Condition E-7)
6. All proposed fencing and required habitat signage shall be placed prior to Final Plat approval. (See Condition A-3)
7. A qualified biologist or environmental consultant shall be on-site during snag erection or downed woody debris placement, in order to minimize habitat disruption to what is absolutely necessary to accomplish the project. (See Condition E-8)
8. A Habitat Conservation Covenant shall be recorded with the Auditor's Office protecting Tract A prior to Final Plat approval. (See Condition A-4)

WETLAND:

Finding 1

Compliance with CCC 13.36 will ensure that the project has no significant environmental impacts to wetlands (see SEPA Determination).

Finding 2

Staff concurs with the March 2004 wetland delineation report prepared by Ecological Land Services as amended in the May 6, 2004 memorandum from Mara McGrath of Ecological Land Services (both documents are contained in Ex. 8). The site contains two Category 4 wetlands. Wetland A is adjacent to Padden and Curtin Creeks, and requires a 50 ft. Type D buffer. Wetland B is less than 10,000 sq. ft and, thus, is exempt per CCC 13.36.130 (1). Examiner finds no evidence to the contrary.

Finding 3

The proposed preliminary plat and stormwater plan avoid impacts to jurisdictional wetlands and wetland buffers, therefore no further wetland review is required. It is worth noting that the wetland preserved and enhanced is in the westside habitat buffer area.

Conclusion:

Based upon the development site characteristics and the proposed development plan, Staff concludes that the proposed preliminary land division complies with the requirements of the Wetland Protection Ordinance PROVIDED that certain conditions (listed below) are met. Therefore, the requirements of the preliminary plan review criteria are satisfied. (See Conditions D-6 and E-9)

ARCHEOLOGICAL

Finding 1

Evaluative testing was performed on the proposed site by Applied Archeological Research, who found that the site has little potential to contain additional archeological information. For that reason, no additional archeological excavations are recommended. The Applicant is required to adhere to all conditions of the Washington State Office of Archaeology and Historic Preservation Excavation Permit #04-01. (See Condition E-10)

TRANSPORTATION CONCURRENCY:

The proposed development is located west of NE 94th Avenue, south of NE 88th Street. The Applicant's traffic study has estimated the weekday AM peak hour trip generation at 109 new trips, and PM peak hour trip generation at 145 trips. The following paragraphs document two transportation issues for the proposed development.

ISSUE 1: CONCURRENCY

The Applicant submitted a traffic study for this proposal in accordance with CCC 40.350.020B and is required to meet the standards established in CCC 41.350.020G for corridors and intersections of regional significance. The County's TraffixTM model includes the intersections of regional significance in the area and the County's model was used to evaluate concurrency compliance.

Finding 1 – Site Access

Level of Service (LOS) standards are not applicable to accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and

safety problems that may occur at the site access to the public roadway network. The access onto NE 88th Street at NE 89th Avenue appears to maintain an acceptable LOS.

Finding 2 – Operating LOS on Corridors

The proposed development was subject to concurrency modeling. The modeling results indicate that the operating levels comply with travel speed and delay standards. The Applicant should reimburse the County for costs incurred in running the concurrency model (See Condition A-11).

Finding 3 – Intersection Operating LOS

The proposed development was subject to concurrency analysis for intersections of regional significance. Capacity analyses were also conducted for impacts to public roadway intersections adjacent to the proposed development site. The study reports acceptable operating levels for the following County intersection:

1. NE 94th Avenue and NE 88th Street

Concurrency Compliance

The proposed development complies with the Concurrency Ordinance CCC 40.350.020.

ISSUE 2: SAFETY

Where applicable, a traffic study shall address the following safety issues:

- traffic signal warrant analysis,
- turn lane warrant analysis,
- accident analysis, and
- any other issues associated with highway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 40.350.030.6a. This section states that “nothing in this section shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development: provided that the developer may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.”

Finding 4 – Turn Lane Warrants

Turn lane warrants are evaluated at unsignalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway. The Applicant’s traffic study analyzed the roadways in the local vicinity of the site to determine if turn lane warrants are met. Turn lane warrants were met at two intersections. A northbound left turn lane is warranted at both NE 88th Street/NE 94th Avenue and NE 86th Street/NE 94th Avenue. The turn lanes should be designed to provide storage to accommodate the 95% queues. A letter from the Applicant volunteering the turn lanes has been submitted in Ex. 36 for an approval recommendation from Public Works Transportation (See Conditions B-2 and B-3).

To comply with these requirements, the Applicant shall submit a signing and striping plan and a work order, authorizing County Road Operations to perform the County's portion of the required work. The Department of Public Works must approve this work order prior to issuance of building permits (See Condition B-4)

Finding 5 – Historical Accident Situation

The Applicant's traffic study analyzed the accident history at the regionally significant intersections; however, all of the historical accident rates at these intersections are below 1.0 accidents per million entering vehicles. Therefore, mitigation by the Applicant is not required.

Finding 6 – Traffic Controls During Construction

During site development activities, the public transportation system (roadways, sidewalks, bicycle lanes, etc.) may be temporarily impacted. In order to minimize these impacts and coordinate work occurring in the public right-of-way, the Applicant will need to prepare and have approved a Traffic Control Plan. (See condition B-5)

The Applicant shall maintain all existing signs within the public right of way within the limits of the development's construction until the public roads have been accepted by the County. The developer shall install and maintain temporary signs where the development's signing and striping plan shows new or modified warning or regulatory signs. New or modified temporary signing shall be installed when any connection is made to the public road network. The developer shall remove the temporary signs immediately after the County installs the permanent signing and striping.

TRANSPORTATION:

Circulation Plan

Finding 1

Cross circulation in vicinity of the site is provided via existing NE 94th Avenue and NE 88th Street. The proposed onsite road extensions will provide circulation within the proposed development and connectivity with the existing roadway network. The existing roadways and the road extensions will provide adequate cross-circulation for serving the proposed subdivision and will allow future developments to meet the cross circulation standards in compliance with Section CCC 12.05A.110

Roads

Finding 2

NE Padden Parkway, abutting the site on the south, is classified as a 4-lane Principal Arterial Parkway with separated bike/pedestrian path (Pa-4cb). Except for landscaping, this road is fully improved (See Condition A-12).

Finding 3

NE 88th Street, as shown on the county Arterial Atlas, is classified as a 2-lane 'Urban Collector' road (C-2). The project proposes a 30-foot half-width right-of-way (ROW), 19-foot half-width roadway, and 6-foot wide detached sidewalk along the frontage. The ROW

dedication and improvements in accordance with CCC Table 12.05A.120-1 and Standard Drawing #12 shall include:

- A minimum half-width ROW of 30 feet
- A minimum half-width paved roadway of 19 feet.
- Curb/gutter, minimum detached sidewalk width of 6 feet, and landscaping

The proposed ROW and improvements for this road comply with the minimum requirements. The project shall extend the pavement beyond the property frontage to match the existing roadway to the west of the site with taper rates approved by the County (See Condition A-13).

Finding 4

NE 91st Avenue, abutting the development on the east is partially improved in accordance with 'Neighborhood Circulator' road standards. The proposed ROW dedication and improvements to complete the improvements will include:

- A partial-width ROW of 24 feet for a total of 54 feet
- A half-width paved roadway of 18 feet for a total of 36 feet
- Curb/gutter and minimum sidewalk of 5 feet on the west

The proposed ROW and improvements for this road comply with the minimum requirements in accordance with CCC Table 12.05A.120-3 and Standard Drawing #13.

Finding 5

NE 86th Street to the east of the development has been classified and constructed to "Urban Neighborhood Circulator" road standards. A section of this road stubbed to the property line on the east is partially constructed with a paved width of 20 feet, curb/gutter, and 5-foot sidewalk on the south side, all within a 40-foot ROW. The existing improvements for this roadway conform to the "Urban Neighborhood Circulator" road standards. On the preliminary plans, this road is shown as a "Neighborhood Circulator" road. However, a memorandum from the Applicant's traffic engineer submitted with the original application indicated that the proposed section of NE 86th Avenue should conform to "Local Residential Access" road standards since this road will serve less than 1500 ADT. In accordance with CCC Table 12.05A.120-3, these roads are designed to provide access to maximum of 150 houses or for 1500 average daily traffic (ADT).

This development will be required to remove the existing barricade along NE 86th Street to provide connection to the existing section with outlet to NE 94th Avenue to the east. Consistent with the existing improvements, the proposed extension of NE 86th Street from the easterly property line to the proposed NE 89th Avenue shall conform to 'Neighborhood Circulator' road standards in accordance with CCC12.05A, Standard Drawing #13, with

- A minimum width ROW of 54 feet
- A minimum width paved roadway of 36 feet
- Curb/gutter and minimum sidewalk of 5 feet
(See Condition A-14).

Finding 6

At Staff request the Applicant has submitted a new proposal (Ex. 25 & 26) for improving NE 86th Street and NE 89th Avenue to handle truck traffic. The proposed plans will allow the commercial development within the westerly portion of the site to have an approvable access route if the attempt for rezoning to residential is not successful. The applicant has made a point of stating that this is only one of several possibilities for access to lot 146.

The Applicant proposes improvements along the road connection from the commercial portion of the site to NE 88th Street with roadway section conforming to 'Industrial' road standards. However, the Applicant proposes to construct NE 89th Avenue with roadway section conforming to the required thickness for 'Industrial' roads but with the right-of-way and paved widths in accordance with the 'Neighborhood Circulator' road standards. The Applicant has submitted a road modification to request approval of curbs and sidewalks for both NE 89th Avenue and NE 86th Street in conformance with residential access road; and to reduce curb-return radii from 45 feet to 35 feet at intersections along these roads (See Transportation Finding 13).

Finding 7

NE 85th Avenue, NE 85th Street, NE 90th Avenue, and NE 90th Loop are classified as 'Local Residential Access' roads. The ROW dedication and improvements in accordance with CCC Table 12.05A-3 and the Standard Drawing #14 shall include:

- A minimum width ROW of 46 feet
- A minimum width paved roadway of 28 feet
- Curb/gutter and minimum sidewalk of 5 feet

The proposed ROW and improvements for these roads comply with the minimum requirements.

Finding 8

NE 86th Circle, NE 87th Circle, NE 86th Court, and NE 87th Court are proposed as 'urban short cul-de-sac' roads. The required dedication and improvements in accordance with CCC 12.05A, Standard Drawing #29, consist of:

- A minimum width ROW of 42 feet
- A minimum width paved roadway of 24 feet
- Curb/gutter and a minimum sidewalk width of 5 feet
- The bulb of the cul-de-sac with a minimum of 30-foot radius paved cul-de-sac and 5-foot thickened sidewalk within a 35-foot radius ROW

The proposed ROW and improvements for these roads comply with the minimum requirements.

Intersection Design

Finding 9

The proposed intersections shall be designed in accordance with Section CCC 12.05A.240. The proposed curb return radii and right-of-way chords at the intersection of NE 89th Avenue and NE 91st Avenue with NE 88th Street do not comply with the standards established in sections CCC 12.05A.240, CCC Table 12.05A.120-1, and Table 12.05A.120-1 (Note 4) (See Conditions A-15 and A-16).

The Applicant has requested modification to curb-return radii at intersection of NE 86th Street with NE 89th Avenue (See Transportation Finding 13).

Sight Distance

Finding 10

In compliance with CCC Table 12.05A.250-2, the required sight distance at controlled intersections for the posted speed of 40 mph along uncontrolled roadway in either direction shall be 400 feet. The corner sight distance at the intersection of NE 91st Avenue with NE 88th Street has been analyzed by the Applicant's traffic engineer. In a letter dated July 30, 2004, the traffic engineer certifies that the intersection sight distance at this location exceed 500 feet.

Access Management

Finding 11

The proposed plans do not provide access to a portion of the property to the west of the creek (designated as Lot 146) currently zoned as highway commercial (CH). The narrative submitted with the application indicates that the Applicant intends to request zone change for the commercial portion of the property to residential zoning. Until such time, however, or until such time as there is a development proposal for lot 146 there is no approved access for that.

Staff reports that during the pre-application process, they argued that the commercial portion of the property could not be accessed via NE Padden Parkway, which is an arterial roadway with restricted access. Staff further argued that accessing the commercial development portion of the site via NE 89th Avenue / NE 86th Street, proposed as residential access roads would not be supported, unless these roads are designed and constructed to "Urban Industrial" road standards. Staff was concerned that commercial developments generate non-residential and truck traffic, which potentially create unsafe conditions for the vehicles backing into the street from the residential driveways. Furthermore, residential roads do not provide adequate geometry or structural section to support daily traffic generated by commercial developments. Such developments normally require roads with acceleration / deceleration or center turn-lanes, thickened structural section, and curb return radii adequate to accommodate turning movements for trucks.

In response to Staff's concern, the Applicant has submitted a new proposal to construct NE 86th Street and NE 89th Avenue, which provides circulation between NE 88th Street and the future commercial development to 'Urban Industrial' road standards. However, the Applicant

is requesting approval of modifications to road geometry and specifically to curb-return radii (See Transportation Finding 13).

Staff finds that the future owners of homes along the route of commercial and truck traffic should be made aware in advance that their fronting street would be used to access the commercial development. Therefore, Staff recommends that a note be placed on the face of the plat to provide such information (See Condition A-17). This condition will obviously go away if lot 146 becomes residential prior to final plat approval.

Staff has recommended that in compliance with section CCC12.05A.210(2) and (3), direct driveway access onto NE Padden Parkway or NE 88th Street should be prohibited. The applicant has expressed concern that such access prohibition for lot 146 is premature until there is either a rezone or a development proposal for Phase 3. Access decisions can be reviewed during site plan review or preliminary plat approval for lot 146 should it be rezoned residential and CCC.12.05A210 can be either enforced or modified. For that reason Staff proposed condition 27 is modified to apply to Phase 1 and 2 and Phase 3 access decision is postponed. (See Condition A-18).

Pedestrian/Bicycle Circulation

Finding 12

Pedestrian circulation facilities in compliance with the Americans with Disabilities Act are required in accordance with the provisions of Section CCC 12.05A.400. The proposed improvements include construction of sidewalk along the frontage of the existing and proposed road extensions. Bike lanes are not required for NE 88th Street, a C-2 collector, and urban access roads. Based on this information, the proposed pedestrian/bicycle circulation complies with the provisions of Section CCC 12.05A.400

Road Modification

Finding 13

Approval Criteria - If a development cannot comply with the Transportation Standards, modifications may be granted in accordance with the procedures and conditions set out in CCC12.05A.660(1)(a). The request shall meet one (or more) of the following four specific criteria:

- a. topography, right-of-way, existing construction or physical conditions, or other geographic conditions impose an unusual hardship on the Applicant, and an equivalent alternative, which can accomplish the same design purpose, is available.*
- b. minor change to a specification or standard is required to address a specific design or construction problem, which, if not enacted, will result in an unusual hardship.*
- c. An alternative design is proposed which will provide a plan equal to or superior to these standards.*
- d. Application of the standards of the Transportation Standards to the development would be grossly disproportional to the impacts created.(Emphasis provided)*

Modification Requests – An application has been submitted to request the following road modification (See Ex. 25):

- Approval of reduced intersection radii at intersection of NE 86th Street/NE 89th Avenue from 45 feet, required for ‘Industrial’ roads, to 35 feet - The narrative submitted with the application indicates that a 35-foot curb-return will adequately serve the expected truck traffic generated by the commercial development, the smaller curb-return improves pedestrian safety by shortening the crossing distance, it serves as a traffic calming as drivers must slow down to go around the corners, and it is consistent with driver expectancy in a neighborhood.
- Approval of rolled curb/gutter and 5-foot sidewalk in accordance with ‘Neighborhood Circulator’ road standards in lieu of those required along ‘Industrial’ roads - The narrative indicates that we believe that maintaining the look of a residential street is important for traffic calming purposes.

The narrative submitted with the application indicates that the requests shall be granted since they meet the criterion described in Section CCC12.05A.660(1)(a)(iii).

Staff’s Evaluation -

1. A reduced intersection radius at the proposed intersection of NE 86th Street and NE 89th Avenue – In accordance with CCC Table 12.05A.120-5, minimum intersection curb radii for ‘Industrial’ roads shall be 45 feet. Staff requested more data for the turning radiuses required for the types of trucks driving through this intersection, and until then Staff was not persuaded that the road modification can be recommended for approval without a condition. The Applicant has submitted additional information utilizing WB-40 truck-turning templates showing that the likely truck traffic will not create conflicts in turning movements and will not compromise safety in this location. (Ex. 43) Staff now finds that the approval criterion described in Section CCC 12.05A.660(1)(a)(iii) is applicable.
2. Rolled curb/gutter and 5-foot sidewalk – Rolled curbs do not provide any physical barriers between the vehicular traffic and pedestrians. This condition becomes more serious at intersection since trucks and larger vehicles tend to drive over sidewalks with rolled curbs more frequently. Aside from creating safety hazards, driving over the sidewalks with inadequate thickness damages the sidewalk requiring periodic maintenance and repair. Staff finds that the request for rolled curb/gutter does not meet any of the criteria described in Section CCC 12.05A.660(1)(a).

A minimum of 6-foot sidewalks are required along the roads classified as ‘Industrial’ roads. Staff found that a 5-foot sidewalk along NE 86th Street and NE 89th Avenue, abutting the proposed residential homes, adequately provides access and circulation for the pedestrians. 5-foot wide sidewalks are required on residential streets. Staff

concluded that this modification request meets the criterion described in Section CCC 12.05A.660(1)(a)(iii).

Mr. Hirokawa objects because modification criteria requires a findings of “Equal or superior” and not just “adequate.” (Ex. 39) At the hearing the Mr. Safayi offers that the surrounding neighborhood (residential) enjoys a 5-foot wide sidewalk and with rezoning of parcel 146 to residential the 5 foot sidewalk would be adequate.

Modification Decision

The Examiner accepts Staff recommendation for Conditional Approval of reduced curb-return radii, Approval of a 5-foot sidewalk, and Denial of rolled curb/gutter (See Conditions A-19 and A-20). The Staff recommendations for NE 86th Street and NE 89th Avenue is a hybrid. The Streets are residential, but because they may serve a commercial area and therefore be used by trucks they are being build to “industrial standards” to accommodate some tucks as well. However there is no evidence that the sidewalks needed to be build to industrial standards, therefore 5-foot sidewalks will be equal to the primary residential standard.

Conclusions (Transportation Plan)

Based upon the development site characteristics, the proposed transportation plan, the requirements of the County's transportation ordinance, and the findings above, the proposed preliminary transportation plan, subject to conditions A-12 through A-20, meets the requirements of the county transportation ordinance.

STORMWATER:

Approval Criteria

Finding 1

Stormwater and Erosion Control Ordinance (CCC 13.29) apply to development activities that result in 2,000 square feet or more of new impervious area within the urban area and the platting of single-family residential subdivisions in an urban area. The project will create more than 2000 square feet of new impervious surface and involves platting of single-family residential subdivision. Therefore, this development shall comply with the Stormwater and Erosion Control Ordinance, CCC 13.29.

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 13.29.200. This project is subject to the erosion control ordinance.

Finding 2

The project proposes two alternatives to achieve the required stormwater quality control. Alternative ‘A’ proposes to treat runoff from the pollution-generating surfaces within the proposed Stormwater Management StormFilter™. Alternative ‘B’ proposes a bio-filtration swale for treatment. The preliminary stormwater design report indicates that the water quality facilities are designed to treat 70% of the 2-year, 24-hour storms, as required. The report indicates that the stormwater quantity control will be achieved by infiltration via drywells and perforated pipe/trench system located in several locations under the sidewalk along the onsite

roadways. The project proposes to drain roofs and lawns for lots 73-81 and 118-134 to street right-of-way. Runoff from Lots 71, 72, and 82 through 86 will be piped to storm system in street. The project proposes to manage stormwater for all other lots via individual perforated pipe/trench drain systems to be installed on each lot.

The project proposes to remove the existing agricultural tiles located on this site prior to construction of homes. The narrative submitted with the application indicates that the stormwater facilities will be dedicated to the county to be publicly maintained.

Site Conditions and Stormwater Issues

Finding 3

The majority of the site has slopes of 0% to 5% and contains field grass, shrubs, and trees. The Curtin Creek and Padden Creek running from south to north through the site and wetland areas have slopes of approximately 25%. The existing residence and associated outbuildings will be removed prior to development of the site. The project proposes 5.92 acres of roof area and 6.38 acres of impervious area due to paved surfaces, sidewalks, and driveways.

Finding 4

Based on the County's GIS mapping and site visits, portions of the proposed site drains toward the adjacent properties. Staff indicated a need to include measures to prevent adverse impact on these properties. In accordance with the provisions of Section CCC 13.29.310(A)(7), no development within an urban area shall be allowed to materially increase or concentrate stormwater runoff onto an adjacent property or block existing drainage from adjacent lots. The project will be required to comply with these provisions. The Applicant has submitted additional information addressing these concerns (See Ex. 40). Staff had originally recommended Condition 31 which required the applicant to provide measures to prevent concentrated or increased runoff unto downstream. While Staff is now satisfied that the issue has been addressed the Examiner requests that this be verified during final engineering review. (See Condition A-21).

Finding 5

The Applicant proposes to place infiltration trenches in the public right-of-way and under the sidewalk in several locations throughout the site. Staff argues that these systems, as proposed, are not easily maintainable and/or repairable without substantial costs. Furthermore, if they are to be replaced, major reconstruction work will be required. These facilities should be installed in areas behind the sidewalk within easements or in separate tracts. In Ex. 40 Hopper and Dennis argue that under the drainage characteristic of the site, the systems of concern are in soil areas that drain at 1000 inches per hour, there is a "greatly decreased possibility that the systems would ever need replacement." Similarly maintenance involved should only amount to catch basin cleaning that should be the same no matter where the infiltration portion is placed. However, Hopper and Dennis and Mr. Printz concede that if during final engineering review, once the system is understood, the location can be changed to an easement. Mr. Safayi testified that he would prefer final engineering review to make a final decision. My experience with storm water drainage in Clark County is that it does not pay to assume only the best outcomes. "Decreased possibility" of replacement is not the same as no replacement;

therefore, it is more prudent to have this issue reviewed during final engineering (See Condition A-22).

Finding 6

The 1972 soil survey of Clark County published by USDA, SCS shows the site to be underlain by 72% Hillsboro loam (HIB) classified by AASHTO as soils with the designation of A-4 soils for the depths of 0 to 36 inches and A-1 for the depths of 36 to 62 inches below the ground surface (bgs); 21% Sifton gravelly loam (SvA) classified as A-2 soils for the depths of 0 to 16 inches bgs and A-1 soils for the depths of 16 to 60 inches bgs; and 7% McBee silt loam (MIA) classified as A-4 soils for the depths of 0 to 44 inches bgs and A-1 soils for the depths of 44 to 62 inches bgs. HIB and SvA soils are designated as hydrologic group "B" and MIA as hydrologic group "D". In accordance with the provisions of CCC13.29.310(C)(1), soils classified as A-1-a, A-1-b, A-2-4, A-2-5, and A-3 as defined in AASHTO Specification M145 are suitable for infiltration.

The project proposes to achieve quantity control by infiltration. The Applicant retained GeoDesign Inc. to conduct infiltration investigation at the subject site in April of 2004. The soil infiltration investigation report indicates that infiltration tests were conducted in 17 locations. Test locations are shown in the report (See Figure 2 of the report, Ex. 8). The infiltration tests in these locations showed infiltration rates of more than 1000 inches per hour (iph) in TP-1 through TP-13, 120 iph in TP-14 and TP-15, and less than ½ iph in TP-16 and TP-17. All the tests were conducted at the depths of 4 to 5 feet below the existing ground. The laboratory tests on the soil samples have resulted in classification of the soils as A-1-a, A-1-b, and A-1. CCC 13.29 considers these soils as suitable for infiltration (See Conditions A-23 and A-24).

Finding 7

Staff indicates that there are indications of impermeable layers consisting of silty material at the depths of 5 to 10 feet bgs, which may intercept flow in vertical direction causing saturation of subgrade and flooding of adjacent properties. Hopper and Dennis argue from the Infiltration Test Summary Table that test pits with cementation are located in the easterly half of the site and that the noted cementation depth follows the surface contour elevation. Therefore, infiltrated water, if impeded, would flow horizontally in the direction of the existing surface slope (i.e. northwesterly toward NE 88th Street. Staff initially argued that the submitted infiltration tests are performed in top 5 feet of soil layers; however, the summary table indicates test pit depth at 9.5 to 11 feet depth, which should address the Staff concern. (See Ex. 40).

An owner of an adjacent property having experienced flooding of his property believes that the impermeable layers in the area prevent infiltration and cause flooding during storm events. The Applicant has submitted reports of infiltration investigation for nearby properties. These reports support the feasibility of infiltration as a method of stormwater disposal in this area (See Ex. 27 and 40). However, to ensure that saturation of top layers of soil due to confinement of permeable soil layers will not cause adverse impact on the future homes within the development and properties downstream from the development, additional analysis at

greater depths may be required. If necessary, the design should be modified by extending the infiltration facilities downward to penetrate the impermeable soil layers (See Condition A-25).

Finding 8

Moderate to rapid groundwater seepage were observed during the infiltration investigation in TP-13, and TP-15 through TP-17. The county generalized water table altitude map shows the groundwater table in this area at approximate elevations of 210 feet. The county GIS mapping system shows the existing ground surface elevation contours being very close to the groundwater surface elevation. Hopper and Dennis in Ex. 40 note that these test pits are not located in the areas where infiltration in the street right of way is proposed. They further argue that based on topography, seepage occurred approximately at elevation 205 to 208 above MSL and that water bearing zones may drain towards Curtin Creek directly to the west that is at a lower elevation. Based on well records the regional aquifer has static water levels occurring are approximately 22 to 55 feet. (Citing geotech report of April 16, 2004)

Staff recommended that the Applicant shall conduct further tests to determine the elevation of high groundwater table since groundwater significantly impacts the rate of infiltration. Furthermore, increased underground flow due to excessive infiltration within confined soil layers in a short period may cause rapid rise in groundwater elevation, which potentially can adversely impact the adjacent properties and the proposed lots located in low elevations. To determine whether such concerns are warranted, the Applicant will be required to include information on possibility of groundwater-mounding in the Technical Information Report. If necessary, stormwater plan shall be modified to mitigate such impacts (See Condition A-26).

Erosion Control

Finding 9

Because the proposed stormwater runoff disposal is by infiltration, it is important to ensure that no soil or contaminated materials inadvertently enter the storm drain collection system until site construction is complete and exposed soil surfaces are stabilized. In order to protect the infiltration facilities from plugging during the construction of the subdivision and the future homes within the proposed lots, all runoffs shall be conveyed to an onsite temporary sedimentation basin or be contained by other approved methods until such time when the County inspection Staff determines that the potential for plugging the infiltration system is minimized to the extent possible (See Condition C-1).

Conclusion (Stormwater)

Mr. Hirokawa makes a reference to a concern that the stormwater facilities may be undersized. The stormwater plans have been extensively reviewed and discussed and there is no evidence for that proposition. Based upon the development site characteristics, the proposed stormwater plan, the requirements of the County's stormwater ordinance, and findings above, the proposed preliminary stormwater plan, subject to conditions A-21 through A-26 and C-1, is feasible.

FLOODPLAIN:

Applicability

Finding 1

The provisions of Flood Plain Combining District, CCC 18.327, are applicable to all areas of special flood hazard within the jurisdiction of Clark County. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "The Flood Insurance Study for Clark County" and accompanying maps are adopted by reference and declared a part of CCC 18.327.

Finding 2

Portions of the subject site are within the 100-year floodplain. The subject site is in unstudied area of the national Flood Insurance Rate Maps (FIRM). Consequently, the flood limits are graphically represented but elevations are not shown (see FIRM Panel 311B). In accordance with CCC 18.327.080(A)(4)(d), provisions for flood hazard reduction, where Base Flood Elevation (BFE) data has not been provided or is not available from another authoritative source, it shall be provided by the Applicant for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less). This development proposes more than 50 lots and contains more than 5 acres of land. Therefore, compliance with the provisions of CCC 18.327 will be required.

The county floodplain specialist based on the information provided by the Applicant had determined that since the proposed phases I and II of the development shown on preliminary plans occur outside of floodplain, a floodplain permit would not be needed. Although the consultants working toward establishing BFE in this area appear to have some disagreements regarding hydrology and survey in this area, Hopper and Dennis indicate that used the preliminary study for FEMA/FIRM map of Curtin Creek prepared by West Consultants and the plans are prepared using West's elevations which are about 3 feet lower through the site than Hopper's calculations. So the consultant believes that the worst case scenario has been presented and that the Padden Creek study will create a lower BFE elevation. Clark County has commissioned a flood study of Padden Creek, and that work is in progress. Completion of that study may not occur prior to the final plat approval for this project. Therefore, the Applicant may be required to provide the BFE data for review and approval by the county (See Condition A-27).

Conclusion (Floodplain)

Based upon the development site characteristics, the requirements of the floodplain combining district, and findings above, phases I and II of the development, subject to condition A-27, can comply with the provisions of Flood Plain Combining District.

FIRE PROTECTION:

Fire Protection Finding 1 – Fire Marshal Review

This application was reviewed by Tom Scott in the Fire Marshal's Office. Tom can be reached at (360) 397-2375 x4095 or 3323. Information can be faxed to Tom at (360) 759-6063. Where there are difficulties in meeting these conditions or if additional information is required, contact Tom in the Fire Marshal's office immediately.

Fire Protection Finding 2 – Building Construction

Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Condition E-11)

Fire Protection Finding 3 – Fire Flow

Fire flow in the amount of 1,000 gallons per minute supplied for 60 minutes duration is required for this application. Information from the water purveyor indicates that the required fire flow is available at the site. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval. (See Condition A-5)

Fire Protection Finding 4 – Fire Hydrants

Fire hydrants are required for this application. Either the indicated number or the spacing of the fire hydrants is inadequate. The Applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a fire hydrant as measured along approved fire apparatus access roads. (See Condition A-6)

Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, contact the Vancouver Fire Department at 360-696-8166 to arrange for location approval. The Applicant shall provide and maintain a six-foot clear space completely around every fire hydrant. (See Conditions A-7, A-8 and A-9)

Fire Protection Finding 5 – Fire Apparatus Access

The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standards. The Applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus. (See Condition A-10)

WATER & SEWER SERVICE:

Finding 1

The site will be served by City of Vancouver water and Hazel Dell sewer district. Letters from the above purveyors confirm that services are available to the site.

Finding 2

Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Health Department Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer.

The Health Department Final Approval Letter will confirm that all existing wells and/or septic systems have been abandoned, inspected and approved by the Health Department (if applicable). (See condition E-3)

Finding 3

The existing wells and/or septic systems are proposed to be abandoned. Submittal of an acceptable "Health Department Final Approval Letter" to the county is required at the time specified in the evaluation letter. (See condition E-3)

IMPACT FEES:

Finding 1

Except for 1 lot designated on the final plat as waived, Park (PIF), Traffic (TIF), and School (SIF) Impact Fees shall apply to the lots within this development. The site is within Park Facility Plan District No. 6 which has a total PIF of \$1,543.00 per lot (Acquisition - \$1,103.00, Development - \$440.00), the Orchards Traffic District which has a TIF of \$1,342.19 per lot, and the Evergreen School District which has a SIF of \$3,540.00 per lot. (See Conditions B-1 and D-3)

Impact fees for the commercial lot will be established at the time of site plan review.

If a building permit application is received more than three years following the preliminary plat approval, the Impact Fees will be recalculated according to the then current ordinance. This shall be noted on the face of the final plat. (See Conditions B-1 and D-3)

SEPA

Determination of Non-Significance (DNS).

Clark County, as lead agency for review of this proposal, has determined that this proposal does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (e). This decision was made after review of a completed environmental checklist and other information on file with the County.

On August 4, 2004 Mr. Hirokawa on behalf of the Friends of Curtin Creek and Mr. Bishop (Appellants) filed a SEPA appeal (Ex. 28), which was followed by a hearing day memorandum (Ex. 39) as well as testimony and a second supplemental comment (September 3, 2004 - Ex. 47).

The Applicants responded with a hearing day memorandum from Ecological Land Services (Ex. 38) and a Reply from Mr. Printz (Ex. 44) as well as testimony and a Closing Brief (September 15, 2004 - Ex. 48)

The Examiner finds the Applicant's responses to be well reasoned and persuasive. The arguments of all of these are summarized in the Hearing and Record portion of this Decision, above. SEPA appeal and comment addresses the following:

- potential impacts on Curtin Creek,

- the associated floodplain,
- riparian habitat and wetlands,
- and to the presence of threatened and endangered species in Curtin Creek.”(Ex. 28) -

These substantive issues have been addressed in the Habitat, Wetland and Floodplain Findings above and the Examiner found compliance with relevant County ordinances. The Examiner is convinced that compliance with these ordinances satisfied specific obligation to protect the resources associated with them.

Under SEPA, a local government processing a permit application for a land use project must make a “threshold determination” of whether the project is a “major action significantly affecting the quality of the environment.”¹³ Based on independent review of all relevant information and analysis, the responsible official determines whether the proposal is “likely to have a probable significant adverse environmental impact.”¹⁴ SEPA requires that the responsible official consider impacts and whether those impacts rise to the level of significance. Part Eight of SEPA is the definitions section and contains the following definitions:

197-11-782: “Probable” means likely or reasonably likely to occur, as in “a reasonable probability of more than a moderate effect on the quality of the environment” (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.

197-11-794: “Significant”

- (1) “Significant” as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.
- (2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

Cumulative Impacts:

Appellants raise the issue of the SEPA “cumulative impacts analysis” and whether that analysis was properly done in this case. While Appellants are correct that a cumulative impacts analysis is required, the scope of that analysis is not as broad as the Appellants assert.

¹⁴ WAC 197-11-330(1)(b)

Under the Appellants' theory, every development adjacent to a creek would require a watershed level study of the cumulative impacts of that development and all other existing, proposed and even speculative developments. This is far beyond the reach or intent of SEPA. The Appellants' premise that a watershed level study is required is a misreading and incorrect application of the WDFW Management Recommendations for Priority Habitats relating to riparian zones ("PHS Riparian Recommendations") Watershed level study is only recommended when local governments are enacting critical areas ordinances. This has been done for Curtin Creek which is why we have applied the Habitat Conservation ordinance above.

Road Extension: The Appellants assert that there are unstudied impacts that must be evaluated now relating to the road stubbed to Curtin Creek. The Appellants argue that to properly evaluate the impacts of the road stub on the west end of 86th Street the Applicant must undertake a watershed level environmental impact study. These assertions are incorrect. The County's SEPA review properly considered the impacts of the development to be proposed only. As has been discussed in the Land Use and Transportation Findings above, the fate of the western portion, lot 146 or Phase 3, is highly uncertain from a development perspective because rezoning and whether or not the County will ultimately allow lot 146 to access Padden or NE 88th Street is unknown.

The County required the Applicant to stub NE 86th Street in the proposed development pursuant to their cross-circulation policies¹⁵. There is no development proposed for the west side of Curtin Creek at this time. Nor is there any proposal to cross Curtin Creek at NE 86th Street. The design and stub of NE 86th Street are being planned by the County to provide the opportunity for cross-circulation in the future. Other circulation and access options may exist.¹⁶ Regardless, the access options and future development of this area are wholly speculative at this point, obviating the need for SEPA review.

The Appellant's fail to demonstrate how the impacts associated with the creek crossing are "probable". Should a crossing be attempted in the future the applicants or their successors will have to address the environmental impacts of such a crossings. As the habitat and wetland discussion indicates current impacts are fully mitigated. The Appellants also fail to demonstrate how the potential crossing would create more than a moderate adverse environmental impact. Because any such crossing, even if it were to occur, would require additional environmental review and permits, it is almost certain that no probable significant adverse environmental impacts will occur. This is because the mitigation measures typically imposed by such permits require the Applicant to mitigate its impacts below significant levels.

In *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 552 P.2d 184 (1987) an EIS case relied on by the Appellants the City had not included the potential impacts related to the development of a parcel which would access the roadway. Project opponents argued that the development of that parcel must be included in the EIS. The Court disagreed stating, "[t]he mandate of SEPA

¹⁵ CCC 12.05A.110.

does not require that every remote and speculative consequence of an action be included in the EIS.”¹⁷ The Court went on to state,

In this case the road is being built to serve existing traffic needs, not to encourage development of the private parcel. The future use of the private parcel is too remote and speculative to call for present evaluation of its future development. If and when a proposed project is brought to the City for the private parcel, it can then deal with environmental considerations.¹⁸

While the case deals with the adequacy of an EIS and not County’s procedural SEPA duty to consider impacts as part of the threshold determination, it does indicate that the purely speculative impacts of development on the west side of Curtin Creek are not ripe for review now.

Phased Review

The Appellants argue that the postponement of the evaluation of the speculative impacts of a speculative development on the west side of the creek constitutes impermissible phased review. To support their theory Appellants cite to *Bjornson v. East County Reclamation Co.*, ___ Wn.App. ___, 95 P.3d 371 (2004). However, this opinion was withdrawn by the Division II, Court of Appeals on September 8, 2004.¹⁹ Appellants also cite to *Port of Vancouver v. Dept. of Ecology*, PCHB Nos. 03-149; 03-151. The PCHB decisions do not shed any light on this issue. The Port of Vancouver sought to drill a test well and conduct pumping tests without undertaking any SEPA review. The Port made several arguments asserting that the drilling and test pumping were exempt from SEPA review, all of which were denied by the PCHB.²⁰ The PCHB holding relates to water rights and SEPA exemptions.

This is not a segmented or phased review. Phased review under WAC 197-11-060(5) occurs prospectively and is proposed by Applicants and utilized by lead agencies where the future specific impacts cannot yet be known at the time when other SEPA triggering decisions must be made. See WAC 197-11-060(c)(ii).

The issue is resolved through an examination of WAC 197-11-060(3)(b), which provides:

Proposals or parts of proposals that are related to each other closely enough to be, in effect, **a single course of action** shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5)). Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:

¹⁸ *Id.*, at 346.

¹⁹ A copy of the Order withdrawing the opinion is attached hereto as Ex. “B”.

- (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented **simultaneously** with them; or
- (ii) Are **interdependent** parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.(emphasis added).

SEPA and the HCP:

Appellants call for the Applicant to perform a “watershed-level study to determine the habitat, water quality and quantity needs of Curtin Creek at this location,”²¹ the Appellants assert that compliance with the HCO does not relieve the County of its duties to evaluate the impacts of the proposal under SEPA.

SEPA Requirements: In the circumstance where the project can be mitigated below the level of significance by the implementation of local development regulations, such as the HCO, a DNS or MDNS is the only proper threshold determination.²² RCW 43.21C.240(1) states:

If the requirements of subsection (2) of this section are satisfied, a county, city, or town reviewing a project action shall determine that the requirements for environmental analysis, protection, and mitigation measures in the county, city, or town's development regulations and comprehensive plans adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws and rules provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. Rules adopted by the department according to RCW 43.21C.110 regarding project specific impacts that may not have been adequately addressed apply to any determination made under this section. In these situations, in which all adverse environmental impacts will be mitigated below the level of significance as a result of mitigation measures included by changing, clarifying, or conditioning of the proposed action and/or regulatory requirements of development regulations adopted under chapter 36.70A RCW or other local, state, or federal laws, a determination of nonsignificance or a mitigated determination of nonsignificance is the proper threshold determination.

²¹ Appellants' Second Supplemental Comment at page 2.

²² RCW 43.21C.240(1)

The County responsible official reviewed and recommended approval of the Applicant's HCP. In doing so the responsible official determined that the HCP complied with all the terms of the HCO and also mitigated the environmental impacts below the level of significance.

For the foregoing reasons, the Applicant requests that the Examiner deny the SEPA appeals filed by Appellants and approve the Merritt's Hideaway project and its associated Habitat Conservation Plan.

DECISION

Based on the foregoing findings and except as conditioned below, this application is approved in general conformance with the applicant's proposal, preliminary site plans (Exs. 5, 6, 7, 40) and the plans and reports associated with this proposal (Ex. 8). This approval is granted subject to the requirements that the applicant, owner or subsequent developer (the "developer") shall comply with all applicable code provisions, laws and standards and the following conditions. These conditions shall be interpreted and implemented consistently with the foregoing findings.

Conditions of Approval

A. Conditions that must be met prior to Final Plat approval and recording; or if improvements are approved by the county for bonding or other secure method, such conditions shall be met prior to issuance of Building Permits per CCC, Sections 12.05A.770(10) & (11) and 13.29.370.

- A-1 The Applicant shall provide a covenant for recording, or a copy of a recorded covenant, which prohibits any development of the wetland and habitat areas. (See Land Use Finding 5)
- A-2 All requisite mitigation shall be installed prior to Final Plat approval, unless otherwise postponed through the establishment of a performance/maintenance bond, escrow account, or other financial guarantee acceptable to the Planning Director. (See Habitat Finding 7)
- A-3 All proposed fencing and required habitat signage shall be placed prior to Final Plat approval. (See Habitat Finding 7)
- A-4 A qualified biologist or environmental consultant shall be on-site during snag erection or downed woody debris placement, in order to minimize habitat disruption to what is absolutely necessary to accomplish the project. (See Habitat Finding 7)
- A-5 Fire flow in the amount of 1,000 gallons per minute supplied for 60 minutes duration is required for this application. Information from the water purveyor indicates that the required fire flow is available at the site. Water mains supplying fire flow and fire

- hydrants shall be installed, approved and operational prior to final plat approval. (See Fire Protection Finding 3)
- A-6 Fire hydrants are required for this application. Either the indicated number or the spacing of the fire hydrants is inadequate. The Applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a fire hydrant as measured along approved fire apparatus access roads. (See Fire Protection Finding 4)
- A-7 Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. (See Fire Protection Finding 4)
- A-8 The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, contact the Vancouver Fire Department at 360-696-8166 to arrange for location approval. (See Fire Protection Finding 4)
- A-9 The Applicant shall provide and maintain a six-foot clear space completely around every fire hydrant. (See Fire Protection Finding 4)
- A-10 The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standards. The Applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus. (See Fire Protection Finding 5)
- A-11 The Applicant shall reimburse the County for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$1,000. The reimbursement shall be made within 60 days of issuance of the Staff Report with evidence of payment presented to Staff at Clark County Public Works (See Transportation Concurrency Finding 2).
- A-12 This project is required to install landscaping along the property frontage on Padden Parkway (See Transportation Finding 2).
- A-13 The project shall extend the pavement along NE 88th Street beyond the property frontage to match the existing roadway to the west of the site with taper rates approved by the County (See Transportation Finding 3).
- A-14 The extension of NE 86th Street from the easterly property line to NE 89th Avenue shall conform to 'Neighborhood Circulator' road standards (Drawing #13) (See Transportation Finding 5).
- A-15 The minimum intersection curb return radii at intersection of NE 91st Avenue and NE 88th Street shall be 35 feet with minimum right-of-way (or easement) chords of 25 feet (See Transportation Finding 9).

- A-16 The minimum intersection curb return radii at intersection of NE 89th Avenue and NE 88th Street shall be 35 feet with minimum right-of-way (or easement) chords of 25 feet (See Transportation Finding 9/Exhibit 43).
- A-17 A note shall be placed on the face of the final plat to indicate that if commercial developments are to occupy the westerly portion of the site (Lot 146), the homeowners along NE 89th Avenue and westerly leg of NE 86th street should expect commercial traffic including delivery trucks through these streets (See Transportation Finding 11).
- A-18 Direct driveway access onto NE Padden Parkway NE 88th Street will not be permitted in Phases 1 and 2. Access for Phase 3 will be reviewed when there is a development proposal for lot 146 (See Transportation Finding 11).
- A-19 NE 89th Avenue shall be constructed with:
- A minimum width ROW of 54 feet
 - A minimum paved roadway of 36 feet
 - Type-A-1 Curb/gutter per Standard Drawing F18
 - A minimum sidewalk of 5 feet
 - Asphalt and base rock thickness shall conform to specification of Standard Drawing #22A
- (See Transportation Finding 13)
- A-20 NE 86th Street west of its intersection with NE 89th Avenue shall be constructed with:
- A minimum width ROW of 50 feet
 - A minimum paved roadway of 32 feet
 - Type-A-1 Curb/gutter per Standard Drawing F18
 - A minimum sidewalk of 5 feet
 - Asphalt and base rock thickness shall conform to specification of Standard Drawing #22A
- (See Transportation Finding 13)
- A-21 Staff shall verify that the project will convey the runoff from upstream properties currently draining toward the site and provide measures to prevent concentrated or increased runoff onto downstream properties (See Stormwater Finding 4).
- A-22 The proposed stormwater facilities shall be placed in easements outside of the right-of-way or within separate tracts to be dedicated to the county, unless alternate placement is allowed for all or portion of the system during final engineering review. (See Stormwater Finding 5).
- A-23 Construction of the stormwater infiltration facilities shall comply with the following requirements:

- a. The infiltration rates used in the final stormwater analysis shall be verified during the construction of the facilities by a licensed geotechnical engineer or a designated representative at the exact location and depth of the proposed stormwater infiltration facilities. Timing and number of tests for representative infiltration systems will be determined at the pre-construction conference.
 - b. A sacrificial temporary drainage system as well as a sedimentation basin for detaining contaminated runoff shall be considered for use during construction of the site improvements (See Stormwater Finding 6).
- A-24 Individual downspout infiltration systems will be allowed for those lots recommended by the Applicant's geotechnical engineer. The system shall be designed based on the infiltration rates recommended by the Applicant's geotechnical engineer and approved by the county Staff. The construction plans shall include a standard detail and specifications for these infiltration systems (See Stormwater Finding 6).
- A-25 The Applicant may be required to provide information on permeability of soil layers beneath the proposed infiltration facilities to show that infiltrated stormwater can migrate down vertically and not be impeded by impermeable soil layers (See Stormwater Finding 7).
- A-26 As part of the Technical Information Report, the Applicant shall submit groundwater-mounding analysis. If necessary, stormwater plan shall be modified to mitigate adverse impacts (See Stormwater Finding 8).
- A-27 The Applicant shall submit analysis to include the flood elevations within the subject site, and if applicable, obtain a flood plain permit prior to the approval of grading and/or construction plans. The Applicant, therefore, accepts the responsibility for changes to the preliminary site plan that may be required in order to comply with the conditions of the floodplain permit (See Floodplain Finding 2).

B. Conditions that must be met prior to issuance of Building Permits

- B-1 Impact fees shall be paid prior to issuance of a building permit for each lot as follows:

Park Impact Fees: \$1,543.00 (Park District No. 6)
(Acquisition - \$1,103.00. Development - \$440.00)

Traffic Impact Fees: \$1,342.19 (Orchards TIF sub-area)

School Impact Fees: \$3,540.00 (Evergreen School District)

Impact fees for the commercial lot will be established at the time of site plan review.

If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees shall be recalculated according to the then-current ordinance rate. (See Impact Fee Finding 1)

- B-2 The Applicant shall install a separate northbound left turn lane at the intersection of NE 94th Avenue/NE 88th Street and provide for minimum of 150 feet of vehicle storage, and all related features unless otherwise directed by the Director of Public Works. The turn lane shall be operational according to approved plans prior to the issuance of building permits as volunteered in letter in Ex. 36. (See Transportation Concurrency Finding 4)
- B-3 The Applicant shall install a separate northbound left turn lane at the intersection of NE 94th Avenue/NE 86th Street and provide for minimum of 250 feet of vehicle storage, and all related features unless otherwise directed by the Director of Public Works. The turn lane shall be operational according to approved plans prior to the issuance of building permits as volunteered in letter in Ex. 36. (See Transportation Concurrency Finding 4)
- B-4 The Applicant shall submit a signing and striping plan and a reimbursable work order, authorizing County Road Operations to perform the required signing and striping within the County right-of-way. This plan and work order shall be approved by the Department of Public Works Transportation prior to the issuance of building permits. (See Transportation Concurrency Finding 4)
- B-5 Prior to issuance of any building or grading permits for the development site, the Applicant shall obtain written approval from Clark County Department of Public Works of the Applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system. (See Transportation Concurrency Finding 6)

C. Conditions that must be met prior to issuance of Occupancy Permits:

- C-1 All runoffs from the site shall be conveyed to an onsite temporary sedimentation basin or be contained by other approved methods until such time when the County inspection Staff determines that the potential for plugging the infiltration system is minimized to the extent possible. (See Stormwater Finding 9).

D. Notes Required on Final Plat

The following notes shall be placed on the final plat:

- D-1 Archaeological (all plats):
"If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
- D-2 Mobile Homes:

"Placement of Mobile Homes is prohibited."

D-3 Impact Fees:

"In accordance with CCC 40.610, except for 1 lot designated on the final plat as waived and Lot 146 (to be established at the time of site plan review), the School, Park and Traffic Impact Fees for each dwelling in this subdivision are: \$3,540.00 (Evergreen School District), \$1,543.00 (\$1,103.00 - Acquisition; \$440.00 - Development for Park District #6), and \$1,342.19 (Orchards TIF sub-area) respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated [REDACTED], and expiring on [REDACTED]. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

D-4 Sidewalks:

"Prior to issuance of occupancy permits, sidewalks shall be constructed along all lots as noted. Sidewalks considered to be the responsibility of the developer, shall be constructed prior to final plat approval."

D-5 Utilities:

"An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

D-6 Wetland Covenants:

"Clark County Wetland Protection Ordinance (Clark County Code Chapter 13.36) requires wetlands and wetland buffers to be maintained in a natural state. Refer to the Conservation Covenant recorded in conjunction with this plat for limitations on the maintenance and use of the wetland and wetland buffer areas identified on the face of this Plat."

D-7 Sidewalks:

"Prior to issuance of occupancy permits, sidewalks shall be constructed along all lots as noted. Sidewalks considered to be the responsibility of the developer, shall be constructed prior to final plat approval."

D-8 Utilities:

"An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

D-9 Critical Aquifer Recharge Areas:

"The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."

D-10 Erosion Control:

"Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

D-11 Driveways:

"No direct access is allowed onto the following streets in Phase 1 and 2: NE Padden Parkway and NE 88th Street. Access for Phase 3 will be determined during Phase 3 review."

D-12 Driveways:

"All residential driveway approaches entering public roads are required to comply with CCC 12.05A."

E. Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

Land Division:

- E-1 Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

- E-2 This project is proposed for phased development as shown on the proposed preliminary plat (Ex. 5). Any extension requests shall be in compliance with CCC 18.600.105. (See Land Use Finding 2)

Water Wells and Septic Systems:

- E-3 Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Well/Septic Abandonment Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy).

Habitat:

- E-4 The Applicant shall implement the "Habitat Conservation Plan," submitted by Ecological Land Services, Inc. and dated March 22, 2004, except as amended herein. (See Habitat Finding 7)
- E-5 A copy of this mitigation plan shall be available on-site during construction, for inspection by Clark County development inspection personnel. (See Habitat Finding 7)
- E-6 Appropriate demarcation and signage of the reduced habitat boundaries shall be in place prior to initiating any groundbreaking activity. (See Habitat Finding 7)
- E-7 Signage shall be posted along the habitat boundaries at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and be perpetually maintained by the homeowners in such a manner so as to sufficiently identify and protect habitat functionality. (See Habitat Finding 7)
- E-8 A qualified biologist or environmental consultant shall be on-site during snag erection or downed woody debris placement, in order to minimize habitat disruption to what is absolutely necessary to accomplish the project. (See Habitat Finding 7)

Wetlands:

- E-9 The requirements of CCC Section 13.36.250 shall apply even if no impacts are proposed. These requirements include:
- Demarcation of wetland and/or buffer boundaries established prior to, and maintained during construction (i.e. sediment fence;
 - Permanent physical demarcation of the boundaries in a manner approved by the Development Services Manager (i.e. fencing, hedgerows, berms etc.) and posting of approved signage on each lot or every 100 ft of the boundary, whichever is less;

- Recording a conservation covenant with the County Auditor that runs with the land and requires that the wetlands and buffers remain in natural state; and,
- Showing the wetland and buffer boundaries on the face of the Final Plat and including a note that refers to the separately recorded conservation covenant.

Archeological:

E-10 The Applicant is required to adhere to all conditions of the Washington State Office of Archaeology and Historic Preservation Excavation Permit #04-01. (See Archeology Finding 1)

Fire Protection:

E-11 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Fire Protection Finding 2)

Transportation:

E-12 Prior to construction, the Applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 12.05A.

Stormwater:

E-13 Prior to construction, the Applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 13.29.

Pre-Construction Conference:

E-14 Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

Erosion Control:

E-15 Prior to construction, the Applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 13.29.

E-16 For land divisions, a copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.

E-17 Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

E-18 Erosion control facilities shall not be removed without County approval.

Excavation and Grading:

E-19 Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).

- E-20 Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

Landscaping:

- E-21 Prior to recording the final plat, the Applicant shall submit a copy of the approved landscape plan(s) for any public right-of-way (if applicable) with a letter signed and stamped by a landscape architect licensed in the state of Washington certifying that the landscape and irrigation (if any) have been installed in accordance with the attached approved plan(s) and verifying that any plant substitutions are comparable to the approved plantings and suitable for the site.

Dated this 29th day of September, 2004

**J. Richard Forester
Hearing Examiner**

NOTE: *Only the decision and the condition of approval are binding on the Applicant, owner or subsequent developer of the subject property as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. There may be requirements of local, state, or federal law, or requirements which reflect the intent of the Applicant, the county Staff, or the Hearings Examiner, but they are not binding on the Applicant as a result of the final order unless included as a condition.*

An **appeal** of any aspect of the Hearing Examiner's decision, except the SEPA determination, may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the Applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the Applicant;

2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030 (H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in subsection 40.510.030(H)(3)(b);
5. A check in the amount of \$279.00 (made payable to the Clark County Board of County Commissioners).